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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,) No. CR-06-0542 MHP
12 Plaintiff,)
13 v.) [PROPOSED] ORDER DENYING
14 DAVID MARION SIMCHO,) MOTION FOR BAIL PENDING APPEAL
15 Defendant.)
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17 THIS MATTER came before the Court on Defendant's Motion for Bail Pending Appeal.
18 By Clerk's Notice entered July 8, 2009, the parties were notified that the Motion would be
19 submitted on the papers without oral argument. The Court having considered the Motion, the
20 United States' Opposition thereto, and for good cause shown,

21 THE COURT HEREBY FINDS that the Defendant has failed to show that any legal
22 question relevant to his appeal is either debatable or doubtful.

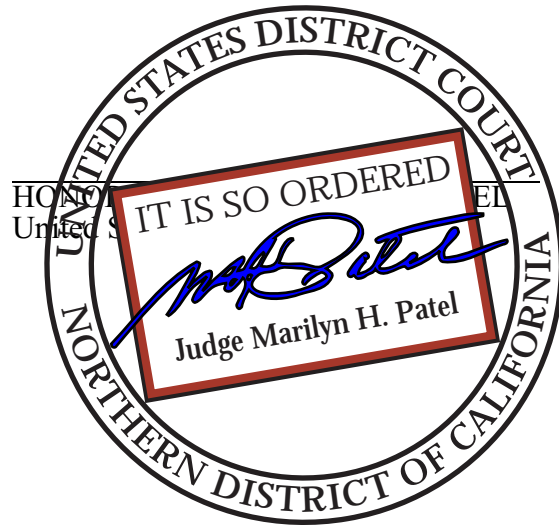
23 THE COURT FINDS that Defendant acknowledges that the appeal will most likely be
24 dismissed and his claim for ineffective assistance of counsel will likely be raised as a habeas
25 corpus proceeding pursuant to 28 U.S.C. §2255. Defendant has not filed a habeas corpus
26 petition. In the event that said habeas motion is filed, such proceedings would be separate from
27 the appeal and therefore would not be grounds under 18 U.S.C. §3143(b) to justify his release
28 pending appeal.

THE COURT FURTHER FINDS that the statutory maximum sentence available for the crimes of preparing a false return is 3 years and 5 years for tax evasion. See 26 U.S.C. §§ 7206(2) and 7201. Defendant stipulated in his Plea Agreement to a total offense level of 17 a criminal history category II, yielding a sentencing range of 27 to 33 months imprisonment under the U.S.S.G. . The presentence report assessed a total offense level of 17 and a criminal history category II, yielding a sentencing range of 27 to 33 months imprisonment under the U.S.S.G. At Defendant's sentencing hearing, the Court considered the guidelines sentencing range together with other factors set forth in §3553(a) of Title 18 of the United States Code. United States v. Booker, 543 U.S. 220 (2005). The Court chose a term of imprisonment at the low end of the guidelines range and within the sentencing range identified in the plea agreement.

Accordingly,

IT IS HEREBY ORDERED that the Plaintiff's Motion for Bail Pending Appeal is **DENIED.**

Date: 7/13/2009



[PROPOSED] ORDER
DENYING MOTION FOR
BAIL PENDING APPEAL,
US v. Simcho, Case No.
CR-06-0542 MHP